sible in a suit by the grantee. *Paige* v. *Cagwin*, 7 Hill, 361. The argument of the court in *Morgan* v. *Nicholl*, L. R. 2 C. P. 117, that for the evidence to be admissible against one it must be admissible against both, would seem without foundation. Of course the plaintiff here could justly object to its admission, because he had no opportunity to cross-examine the witness, but why should the defendant object who had? The cases of *res judicata* and estoppel, which are often cited as indicating the proper rule for this subject, rest on an entirely different principle.

There has, indeed, in some jurisdictions, been a slight deviation from the general rule in criminal causes. In a civil trial for an assault, the evidence of a deceased witness given in a criminal trial for the same assault has been admitted. *Kreuger* v. *Sylvester*, 100 Ia. 647. And *dicta* are occasionally found that if the opposite party had the right of cross-examination it is sufficient. Undoubtedly this desirable result will eventually be reached.

RECENT CASES.

AGENCY — UNLAWFUL ACTS — LIABILITY OF CORPORATION. — The plaintiff left defendants' train before reaching the station for which he had bought a ticket. The station master, by locking the only door of the station, detained him to compel a surrender of this ticket. *Held*, that the defendants are liable for the false imprisonment. *Farry* v. *Great Northern Ry. Co.*, [1898] 2 Ir. 352.

The court recognizes the English doctrine that a corporation cannot be held to incidentally authorize the commission of unlawful acts by its agents, since the corporation has no authority to commit such acts itself. *Poulton* v. *London, etc. Ry. Co.*, L. R. 2 Q. B. 534; *Barry* v. *Dublin, etc. Co.*, L. R. 26 Ir. 150, but holds that in this case, although the detention was unlawful, yet locking the door was lawful and within the scope of the agent's authority. This reasoning seems artificial, for locking the door was the very act which caused the detention, and must have been equally unlawful. Moreover, the English doctrine itself can hardly be regarded as sound, inasmuch as corporations clearly have the physical power, without legislative authority, to commit unlawful acts, and the logical result of the argument is to exempt all principals from liability for their agents' torts which are not expressly authorized. A better view is that unlawful as well as lawful acts may be within the incidental powers of the agents of a corporation. *Howe* v. *Newmarch*, 94 Mass. 49; *Johnston* v. *South Western R. R. Bank*, 3 Strob. Eq. 263. The above decision reaches an undoubtedly correct result, and shows a desire of the court to limit the application of the English doctrine where possible.

BANKRUPTCY — RIGHTS OF TRUSTEE IN PREMISES LEASED TO BANKRUPT. — The premises were leased to the bankrupt upon an unexpired lease. The landlord brought ejectment against the trustee, who had continued the possession. Upon the petition of the trustee for an injunction, *held*, that the court will allow the trustee, without affirming the lease, to continue the possession for such time as may be reasonably necessary for the execution of his trust, upon the payment to the landlord of compensation. *Re Chambers, Calder & Co.*, 98 Fed. Rep. 865 (Dist. Ct., R. I.).

It is a general principle that all property of the bankrupt passes to the trustee, except that he may reject unprofitable property. See *American File Co.* v. *Garrett*, 110 U. S. 295. Accordingly, as regards a lease, the trustee, unless restrained by the terms of the lease, may adopt it or reject it, as he judges for the best interests of the estate. *Re Breck*, 8 Ben. 93; *Commonwealth* v. *Franklin*, 115 Mass. 278. It has been tacitly assumed that the trustee must either affirm or disaffirm, and is only entitled to the protection of equity for a reasonable time in which to come to a decision and upon payment of compensation to the landlord. *Re Laurie*, 4 Nat. Bank. Reg. 7; *Re Washburn*, Fed. Cas. No. 17211; *Re Metz*, 6 Ben. 571. The proposition of the principal case, however, is very different; that the trustee without affirming the lease may hold possession for such time as is reasonable for the execution of his trust upon payment of compensation for the occupation. This view is without authority, but it commends itself as just; for otherwise the coercion of the situation might force the trustee to incur great loss.

BANKRUPTCY — WHAT CORPORATIONS MAY BE ADJUDICATED BANKRUPTS. — *Held*, that a water supply corporation cannot be adjudicated a bankrupt. *Re New York, etc. Co.*, 98 Fed. Rep. 711 (Dist. Ct., N. Y.).

The operation of the Bankruptcy Act of 1898, § 4, is restricted to "corporations engaged principally in manufacturing, trading, or mercantile pursuits." The act of 1867, § 37, applied more broadly to all "moneyed, business, or commercial corporations." Hence decisions under that act do not aid much in construing the present act. See, however, *Re Chandler*, 2 Lowell, 478; *Re Merchants', etc. Ins. Co.*, 3 Biss. 162. The present provision is as yet undefined, except that it has been held that a mutual insurance company is not "engaged in mercantile pursuits," *Re Cameron, etc. Ins. Co.*, 96 Fed. Rep. 756 (Dist. Ct., Mo.); while a sanatorium corporation is so engaged, *Re San Gabriel Co.*, 95 Fed. Rep. 271 (Dist. Ct., Cal.). The principal case admits that if the water had been sold in bottles or casks it would have been a mercantile pursuit; and that the supply came through pipes seems an insufficient ground of distinction. Certainly there is none in economic theory, and probably none in common understanding. This dealing in water seems "buying or selling" or "traffic," — for such are the tests suggested. Accordingly, the principal case is to be questioned.

CARRIERS — TELEGRAPH COMPANIES — REGULATIONS. — The defendant telegraph company made a regulation requiring claims for damage, caused by the company's failure to correctly transmit messages, to be made within sixty days after the message was sent. *Held*, that the regulation is unreasonable and void. *Davis* v. *Western Union Tel. Co.*, 54 S. W. Rep. 849 (Ky.).

This case represents the law in Kentucky and a few other jurisdictions. *Western Union Tel. Co.* v. *Eubank*, 100 Ky. 591; *Meadors* v. *Western Union Tel. Co.*, 96 Ga. 788. The overwhelming weight of authority, however, is contrary to this view. *Findlay* v. *Western Union Tel. Co.*, 64 Fed. Rep. 459 (Cir. Ct., Va.); *Albers* v. *Western Union Tel. Co.*, 98 Iowa, 51; *Western Union Tel. Co.* v. *Beck*, 58 Ill. App. 564. The latter view seems the more reasonable. A rule of this kind is a practical necessity for such companies because of the great amount of business done by them, and the impossibility of keeping the records as evidence for any great length of time. No great hardship is likely to result, as two months would, in all but exceptional cases, give the sender ample time to learn of the non-delivery of the message and to notify the company.

CONFLICT OF LAWS — FOREIGN JUDGMENT — DEFENCE OF FRAUD. — *Held*, that fraud may be pleaded as a defence to a foreign judgment. *Dumont* v. *Dumont*, 45 Atl. Rep. 107 (N. J., Ch.). See NOTES.

CONFLICT OF LAWS — TAXATION — CHOSE IN ACTION. — The plaintiff, a resident of New York, owned credits evidenced by notes secured by mortgages on realty in New Orleans. These notes were in the hands of an agent for collection in New Orleans. An act of Louisiana taxed credits arising from business done in the state irrespective of the domicil of the owner. *Held*, that under this statute these credits of the plaintiff may be taxed. *City of New Orleans* v. *Stemple*, 20 Sup. Ct. Rep. 110. See NOTES.

CONSTITUTIONAL LAW — LIMITS OF THE POLICE POWER. — The defendant violated a city ordinance, authorized by statute, which prohibited the sale of meat, fish, butter, or other provisions in any place of business where dry goods, clothing, or drugs were sold. *Held*, that as it in no way tends to protect the safety, health, morals, or welfare of the public, the ordinance is not within the police power; that it is therefore a deprivation of liberty and property without due process of law, and so forbidden by both the constitution of the United States and of the state. *Chicago* v. *Netcher*, 55 N. E. Rep. 707 (Ill.).

The court, in declaring a law unconstitutional, exercises much the same function that it does in revising the verdict of a jury. *Ogden* v. *Saunders*, 12 Wheat. 213. Now it is well known that butter, milk, etc., absorb impurities, and it is also true that ready-made clothing often comes from the sweat-shops. To say, therefore, that a law which forbids the sale of these articles in the same store does not reasonably tend to promote the public health and welfare seems extraordinary. The tendency in Illinois is shown by a recent decision of the Superior Court holding unconstitutional a law which forbade the use of the American flag for advertising purposes. It was declared not within the police power, because it did not concern the public health, morals, or safety. *People* v. *Kruse*, Chicago Daily Law Bulletin, Nov. 21, 1899. The doctrine that such a law is a deprivation of liberty and property without due process of law is not new in that state, and if mere authority could make right the continued limitation of the legislative function, the present case could not be criticised. *Frorer* v. *People*, 141 Ill. 171; *Braceville Coal Co.* v. *People*,

147 Ill. 66. Regulation of the legislative power to such narrow limits cannot be expected to stand the test of time. *Commonwealth* v. *Alger*, 61 Mass. 53; *Head* v. *Amoskeag Mfg. Co.*, 113 U. S. 9; *Wurts* v. *Hoagland*, 114 U. S. 606.

CONSTITUTIONAL LAW — PROCEDURE — NEW QUESTION ON APPEAL. — A judgment was based on an unconstitutional statute. *Held*, that it must be reversed on appeal, though the constitutional question was not raised in the court below and there is no error in the record. *Monticello Distilling Co.* v. *Mayor of Baltimore*, 45 Atl. Rep. 210 (Md.).

The Maryland Code provides that no matters shall be considered on appeal which were not presented and determined in the trial court. *Cherbonnier* v. *Goodwin*, 79 Md. 55. In jurisdictions where this rule prevails, it is almost universally held in civil causes that constitutional questions cannot be raised for the first time on appeal. *Chiniquy* v. *People*, 78 Ill. 570; *Hopper* v. *Chicago, etc. Ry. Co.*, 91 Iowa, 639; *Delancy* v. *Brett*, 51 N. Y. 78. The theory of the principal case appears to be that it is the duty of the court to check violations of the constitution whenever the opportunity offers. The opposing cases are more in harmony with the sounder view, that a court should not pass upon the validity of a legislative act unless the case before it cannot be disposed of otherwise. *Ex parte Randolph*, 2 Brock. 447. It is difficult to see how, under this well-established rule, a court can be justified in making an exception to an express statutory enactment, for the sake of declaring a statute unconstitutional.

CONTRACTS — DEBT — EFFECT OF RECEIPT. — The plaintiff gave to the defendants a receipt in full of his demands upon them, because they refused to pay any more money without it. *Held*, that in the absence of fraud or mistake the plaintiff has precluded himself from further recovery. *Flynn* v. *Hurlock*, 45 Atl. Rep. 312 (Pa.).

It is a well-settled common law doctrine that payment of part of a debt in satisfaction of the whole is not a full discharge. *Foakes* v. *Beer*, 9 App. Cas. 605; *Fire Ins. Assn.* v. *Wickham*, 141 U. S. 564. But the results of this rule are so unsatisfactory that the courts have made certain arbitrary exceptions to its universal application. Thus the rule has been held not to apply when a debtor is insolvent, or even honestly believed to be. *Shelton* v. *Jackson*, 49 S. W. Rep. 414 (Tex.); *Rice* v. *London etc. Co.*, 70 Minn. 77. The holding in the principal case, that a written receipt is equivalent to release under seal, is clearly another exception, for a receipt is generally regarded merely as evidence of payment. *Harriman*, v. *Harriman*, 78 Mass. 341. This view is adopted in a few jurisdictions. *Gray* v. *Barton*, 55 N. Y. 68; *Green* v. *Langdon*, 28 Mich. 221. It would seem, however, better policy that the amendments to such a well-established rule be made by the legislature rather than the courts. This has been done in a number of states. *Clayton* v. *Clark*, 74 Miss. 499. See 12 HARV. LAW REV. 525.

CORPORATIONS — CORPORATION DE FACTO — EXPIRATION OF CHARTER. — The defendant was sued as a corporation, and pleaded the expiration of its charter before action brought. *Held*, that it is capable of being sued as a *de facto* corporation, and is estopped to deny its corporate existence. *Brady* v. *Delaware Mutual Life Ins. Co.*, 45 Atl. Rep. 345 (Del., Super. Ct.).

All transactions with the company with reference to the insurance policy sued on had taken place before the expiration of the charter. The plea did not deny that the contract was binding upon the corporation, but alleged that since the making of it the corporation had ceased to exist. It is difficult to see what bearing estoppel can have upon this defence. Nor can the case be supported on the ground that, in spite of the expiration of the charter, the defendant remained a *de facto* corporation whose existence could be questioned only by the state in *quo warranto* proceedings. There can be no corporation *de facto* except under color of law. *Snyder* v. *Studebaker*, 19 Ind. 462. And when a corporation is chartered for a limited time there is no law which can give color to its existence after the time has expired. Accordingly, it has generally been held that the expiration of a corporation's charter works a dissolution *ipso facto*, after which the corporate existence may be denied in any proceeding where the question may arise. *Bradley* v. *Repell*, 133 Mo. 545; *Krutz* v. *Paola Town Co.*, 20 Kan. 397; *Sturges* v. *Vanderbilt*, 73 N. Y. 384. It seems, therefore, that the plea in the principal case was good, and that the plaintiffs should have been left to their remedy against the corporate assets.

CRIMINAL LAW — INDECENT EXPOSURE — PUBLICITY. — The defendant, in a field adjoining a highway, intentionally exposed his person to one female. There was no evidence on the record that others saw the act, or that they were in a position to have seen it. *Held*, that the defendant is not indictable for indecent exposure. *Morris* v. *State*, 34 S. E. Rep. 577 (Ga.).

The cases in point are conflicting. Some hold that a person is only indictable for indecent exposure when the act was done in the presence of several persons, though it is immaterial whether they saw it or not. *Regina* v. *Farrel*, 9 Cox C. C. 446; *Regina* v. *Webb*, 1 Den. C. C. 338; *Regina* v. *Watson*, 2 Cox, C. C. 376. Others have held that such an act is a crime if it was committed in such a place that it was likely to be seen by a considerable number of people. *State* v. *Roper*, 1 Dev. & Bat. 208; *Regina* v. *Elliot*, L. & C. 103. The latter view seems preferable. It is more in line with the doctrines of criminal law in regard to other nuisances. *Commonwealth* v. *Oaks*, 113 Mass. 8; *Commonwealth* v. *Harris*, 101 Mass. 29. And it seems that, though no one is present, such an act does appreciably endanger the morals of the public. 1 Bish. New Cr. L. § 1130. It is not clear from the language of the court whether it recognized the line of distinction suggested.

DAMAGES — PUNITIVE DAMAGES — REPLEVIN. — *Held*, that punitive damages are properly allowed in replevin. *Wiley* v. *McGrath*, 45 Atl. Rep. 331 (Pa.).

The doctrine of punitive damages is firmly established in most jurisdictions as applicable in general to actions in tort, though not in contract. *Missouri, etc., R. R. Co* v. *Humes*, 115 U. S. 512. *Contra*, *Bernard* v. *Poor*, 38 Mass. 378; *Bixby* v. *Dunlap*, 56 N. H. 456. In some jurisdictions which allow such damages in other tort actions, they are not allowed in replevin, probably on historical grounds. The principal case, however, is in accord with the majority of the decisions, and states the better view. *Brigsee* v. *Maybee*, 21 Wend. 144. *Contra*, *Butler* v. *Mehrling*, 15 Ill. 488; *Hotchkiss* v. *Jones*, 4 Ind. 260. The whole doctrine of punitive damages is, on principle, open to two objections: the state's function of punishment is made over to a private individual, and that individual thereby acquires something to which he is not entitled. But, if punitive damages are to be allowed at all, there seems to be no reason for a distinction between the modern American action of replevin and trover.

EVIDENCE — EXPERT TESTIMONY — AGE OF HANDWRITING. — *Held*, that refusal to allow a handwriting expert to testify as to the age of documents offered in evidence is error. *Tally* v. *Cross*, 26 So. Rep. 912 (Ala.).

The cases on this point are conflicting, but the weight of authority is in accord with the principal case. *Falton* v. *Hood*, 34 Pa. St. 365; *Bank* v. *Hobbs*, 77 Mass. 250. *Contra*, *Cheney* v. *Dunlap*, 20 Neb. 265; *Sackett* v. *Spencer*, 29 Barb. 180. On this question courts may well differ. Such evidence is certainly entitled to very little weight, for the appearance of any piece of writing is due largely to influences which are practically unascertainable. It seems a better doctrine to allow the trial judge to determine in each particular case whether the jury would be legitimately helped by an expert's opinion. On this view the ruling of the trial judge would not be open to revision, and the principal case may, therefore, be questioned.

EVIDENCE — MODIFICATIONS BY PAROL — GRAIN RECEIPTS. — *Held*, that a contract for the storage of grain evidenced by a receipt, which by statute is negotiable like a bill of lading, may not be modified by a subsequent parol agreement. *Thompson* v. *Thompson*, 81 N. W. Rep. 543 (Minn.). See NOTES.

EVIDENCE — PEDIGREE — TESTIMONY AS TO CONTEMPORANEOUS FACTS. — *Held* that the testimony by a member of the family to the common repute in the family is competent on questions of pedigree, both ancient and contemporary. *Smith* v. *Kenney*, 54 S. W. Rep. 801 (Tex., Civ. App.).

It is universal law, based on necessity, that the declaration of deceased persons who are proved to have been related to the family, are receivable on questions of pedigree, though based on the family repute, and not on the personal knowledge of the declarant. *Monkton* v. *Attorney-General*, 2 Russ. & M. 147. It is commonly stated that testimony by living members of the family is also admissible under the same circumstances. *Van Sickle* v. *Gibson*, 40 Mich. 170; *Henderson* v. *Cargill*, 31 Miss. 367. The better rule, however, is that such evidence is good only as to ancient matters of pedigree, and not as to contemporary facts, there being no adequate reason for the acceptance of hearsay evidence in the latter case. *Doe* v. *Auldjo*, 5 U. C. Q. B. 171. *In re Hurlburt's Estate*, 68 Vt. 366. The doctrine of the principal case, therefore, might well be qualified.

EVIDENCE — PRIVILEGE — ATTORNEY AND CLIENT. — In an action to contest a will, the testimony of an attorney, who was a subscribing witness, as to communications made to him by the testator in reference to the will, was excluded. *Held*, that it should have been admitted. *Kern* v. *Kern*, 55 N. E. Rep. 1004 (Ind.).

The general rule is, that a legal adviser cannot be permitted to disclose communica-

tions, made to him in that capacity, unless the client consents. *Greenough* v. *Gaskell*, 1 Myl. & K. 101; *Higbee* v. *Dresser*, 103 Mass. 523. This is in order that confidential communications may be made to an attorney without apprehension of disclosure. Exception is generally made to this rule, in cases of contested wills, as to communications made by the testator. It is said that, where both parties claim under the client, the reasons for the rule no longer apply. *Russell* v. *Jackson*, 9 Hare, 387; *Doherty* v. *O'Callaghan*, 157 Mass. 90. But this reasoning seems hardly sound, as even in such a case the real interests of the testator may still demand secrecy. The principal case can be supported, however, on the sounder view, that by making the attorney a subscribing witness the testator has waived the privilege. *Denning* v. *Butcher*, 91 Iowa, 425; *Alberti* v. *New York, etc., Ry.*, 118 N. Y. 77.

EVIDENCE — PRIVILEGED COMMUNICATION — ATTORNEY AND CLIENT. — The plaintiff was present at, and took part in, a consultation between an attorney and his client. *Held*, that the plaintiff's statements to the attorney are privileged, and the defendant cannot compel the attorney to testify to them. *Hartness* v. *Brown*, 59 Pac. Rep. 491 (Wash.).

The English, and a number of the American courts, treat all communications to an attorney as privileged, whether made by the client in person or by a third party on his account. *Greenough* v. *Gaskell*, 1 Myl. & K. 98; *In re Aspinwall*, 7 Ben. 433. The principal case follows this line of decisions. On the other hand, many courts hold that no communication is privileged unless made by the client personally, and not in the presence of third persons. *People* v. *Buchanan*, 145 N. Y. 1; *In re O'Donahoe*, Fed. Cas. No. 10435. On principle, it seems that the latter rule is preferable. The doctrine of privilege is founded on public policy. But such a serious exemption from the ordinary duties of witnesses should be confined as narrowly as is consistent with the policy in which it originates; and there appears to be no reason for extending it further than to cover confidential communications between the attorney and his client.

EVIDENCE — VIEW BY JURY — VALUATION OF LAND. — In proceedings to assess the value of land taken by eminent domain, *held*, that the impressions acquired by the jury after a view of the *locus in quo* are competent evidence. *Chicago, etc., Ry. Co.* v. *Farwell*, 81 N. W. Rep. 440 (Neb.).

When the jury is called upon to assess the value of land, the doctrine of this case is adopted by the weight of authority. *Parks* v. *Boston*, 32 Mass. 798; *Springfield* v. *Dalby*, 139 Ill. 34. Some courts, however, hold that the view by the jury can be used in such cases only to aid in applying the evidence given in court. *Close* v. *Samm*, 27 Iowa, 503; *Machader* v. *Williams*, 54 Ohio St. 344. This restriction is almost always imposed where the purposes of the view are other than the valuation of the land. *Wright* v. *Carpenter*, 49 Cal. 607. Such a distinction seems based on no sound reasons, and the doctrine of the principal case might better be applied to all cases. The impressions of the jury should be better evidence than the second-hand reports of witnesses, and to ask the jury to forget what they have learned does not commend itself to reason. *Tully* v. *Fitchburg R. R. Co.*, 134 Mass. 499; Thomp., Trials, § 893.

INSURANCE — LIFE INSURANCE — ASSIGNMENT OF POLICY. — The plaintiff's husband took out a policy of insurance on his life, naming the plaintiff as beneficiary. He pledged this policy to the defendants as security for a loan. *Held*, that on his death the beneficiary, without repayment of the loan, can replevin the policy. *Jackson Bank* v. *Williams*, 26 So. Rep. 965 (Miss.). See NOTES.

INTERNATIONAL LAW — PRIZES — FISHING VESSELS. — *Held*, that coast fishing vessels employed in catching and bringing in fresh fish are exempt from seizure as prizes of war. *The Paquete Habana, The Lola*, 20 Sup. Ct. Rep. 290. See NOTES. 13 HARV. LAW REV. 594.

INTERPRETATION OF STATUTES — MARRIED WOMEN'S ACTS — EFFECT ON STATUTE OF LIMITATIONS. — *Held*, that a statute permitting married women to sue and be sued does not, by implication, repeal the clause in the statute of limitations providing that it shall not run against *femes covert*. *Bliler* v. *Boswell*, 59 Pac. Rep. 798 (Wy.).

The contrary doctrine proceeds on the ground that the common law incapacity of married women to sue alone was the reason for the saving clause in the statute of limitations, and that, this disability having been removed, the reason and the rule must fall together. *Brown* v. *Cousens*, 51 Me. 301; *Cameron* v. *Smith*, 50 Cal. 303. The present case maintains that an additional cause for the rule was the danger of the husband's influence over the wife, impeding the exercise of her legal rights. As this influence still exists, therefore, although the incapacity is removed, the rule cannot be impliedly

repealed. *Lindell Real Estate Co.* v. *Lindell*, 142 Mo. 161; *Ashley* v. *Rockwell*, 43 Ohio St. 386. The former view, though against the weight of authority, is more correct in theory, as the provision was probably designated to relieve cases of real disability, and not those of mere disinclination arising from marital influence.

INTERPRETATION OF STATUTES — TAXATION — EXEMPTION. — Under a statute exempting from taxation such college property as is "occupied by them or their officers for the purposes for which they were incorporated," *held*, that a building used for a students' dining hall, the president's house, and certain houses leased to professors for dwelling-houses are exempt. *President, etc., of Harvard College* v. *Assessors of Cambridge*, 55 N. E. Rep. 844 (Mass.).

The case is interesting — at least locally. The decision is fairly clear as applied to the president's house since that is largely used for administrative purposes, and the occupation of it is practically a part of the presidential duties. The building used as a dining hall is also designed for college purposes — for the accommodation of the student body. But the case is not so clear in regard to the houses of the professors. Under the same statute, houses owned by a college and rented to professors for their occupation were held not exempt. *Williams College* v. *Assessors of Williamstown*, 167 Mass. 505. The present case distinguishes on the ground that here the houses were used for professorial duties, and tends to a liberal construction of the statute in favor of the colleges — to exempt all college property indirectly connected with the college administration.

PERSONS — HUSBAND AND WIFE — DEBT. — Under a statute allowing married women to contract with their husbands, *held*, that a wife may prove a claim as creditor against her husband's insolvent estate, though she cannot maintain an action at law against her husband. *Weeks & Potter Co.* v. *Elliot*, 45 Atl. Rep. 29 (Me.).

The principal case is of interest because it passes upon a point not before decided under the married women's acts. In Maine and a majority of the other States, in which these acts grant to the wife the power to contract with her husband, other clauses are construed to withhold a remedy for the breach of such contracts, because of the bad policy in allowing husband and wife to be opposed to each other in actions at law. *Crowther* v. *Crowther*, 55 Me. 358; *Chestnut* v. *Chestnut*, 77 Ill. 346. *Contra, May* v. *May*, 9 Neb. 16; *Wilson* v. *Wilson*, 36 Cal. 447. This reason for denying the remedy applies only to actions between husband and wife personally. It is accordingly held that an action is maintainable by the wife's executor on a contract made by her with her husband. *Morrison* v. *Brown*, 84 Me. 82. The principal case seems sound, and reaches a satisfactory result in saving the wife from an unnecessary disadvantage as against the other creditors of her husband. See *Mayfield* v. *Kilgour*, 31 Md. 240.

PERSONS — INSANITY — CONTRACT FOR NECESSARIES. — The plaintiff's intestate, an insane person, assigned two mortgages to the defendant, as consideration for her agreement to take care of him during the rest of his life. The contract was a fair one when made, and was duly performed. In a suit by the plaintiff to have the assignment set aside, *held*, that the defendant must reassign the mortgages, but only on payment of the value of the services rendered. *Gilgallon* v. *Bishop*, 61 N. Y. Supp. 467 (Sup. Ct., App. Div., Third Dept.).

An insane person is everywhere held liable, whether the other party had notice or not, for the fair value of necessaries furnished him. *La Rue* v. *Gilkyson*, 4 Pa. St. 375; *Baxter* v. *Earl of Portsmouth*, 2 C. & P. 178. This rule seems to have been incorrectly applied in the principal case. The contract, when made, was reasonable, the defendant's risk of loss balancing her chance of gain, since both depended on the duration of the intestate's life. In the outcome, it proved favorable to the defendant, and therefore the court allows her to keep only the actual value of her services. The better result would have been reached if the court had taken the time of entering into the contract as the time to judge of its reasonableness, and refused to disturb it, since it was entirely executed. No case directly on the point has been discovered, but in a similar case, where the contract was with an infant, the position contended for was taken. *Stone* v. *Dennison*, 30 Mass. 1.

PROPERTY — EASEMENTS — WAY OF NECESSITY. — The plaintiff divided his farm into two lots by conveying a strip of land to a railroad. Some years later a natural gas was discovered on one lot. *Held*, that the plaintiff has a way of necessity to pipe the gas across the railroad to his house on the other lot. *Uhl* v. *Ohio, etc., Ry.*, 34 S. E. Rep. 934 (W. Va.).

It is not clear on exactly what theory the court proceeds. Mere necessity, occurring after the grant, will not give rise to an easement. *Ellis* v. *Blue Mountain Assn.*, 41 Atl.

Rep. 856 (N. H.); *Morse* v. *Benson*, 151 Mass. 440. There is, however, a doctrine that an existing way of necessity may be used as a way for all purposes that subsequently become necessary. *Camp* v. *Whitman*, 51 N. J. Eq. 467; *Myer* v. *Dunn*, 49 Conn. 71. *Contra*, *London* v. *Riggs*, 13 Ch. D. 798. The principal case cannot rest on this theory, since a right to lay gas pipes seems hardly a legitimate incident to a right of way. Neither will the doctrine of implied reservation of quasi-easements support the result, since no such user of the land was apparent at the time of the grant. *Carbrey* v. *Willis*, 89 Mass. 369; *Tabor* v. *Bradley*, 18 N. Y. 109. Furthermore, since it does not appear that the plaintiff had absolutely no other access to his land, no real necessity is shown. It seems, therefore, impossible to support the principal case on any theory.

PROPERTY — STATUTE OF USES — RESULTING USE. — A husband purchased land with his own money, but had the conveyance made to his wife, under circumstances showing an intention to create a use in his favor. *Held*, that this resulting use is executed by the Statute of Uses, and the legal estate is vested in the husband. *Fellows* v. *Ripley*, 45 Atl. Rep. 138 (N. H.).

This decision follows the settled law in New Hampshire. *Osgood* v. *Eaton*, 62 N. H. 512. But the doctrine is utterly opposed to common law principles. It was early decided that the Statute of Uses does not execute a use upon a use. *Tyrrel's Case*, Dyer, 155 *a*. Hence a use limited after a conveyance, in which one use has been already declared to the grantee, is valid only in equity. *Doe* v. *Passingham*, 6 B. & C. 305. Since modern deeds invariably contain the declaration of a use to the grantee, the courts, in a case like the present, hold uniformly that the nominal grantee takes the legal title, subject to a resulting trust in favor of the party paying the purchase money. *Dyer* v. *Dyer*, 2 Cox, 92; *Guthrie* v. *Gardner*, 19 Wend. 414. In some states, however, these resulting trusts are specifically abolished by statute, and the estate vests absolutely in the first grantee. *Schultze* v. *New York City*, 103 N. Y. 307; *Campbell* v. *Campbell*, 70 Wis. 311. It seems better policy, if a radical change in the law is desired, to have it accomplished by legislative action rather than by judicial legislation.

QUASI-CONTRACTS — COMMON CARRIER — EXCESSIVE CHARGES. — After dispute, the plaintiff paid tolls to a navigation company, whose charter only authorized the collection of reasonable tolls. *Held*, that although the tolls were unreasonable, the excess cannot be recovered back, since no formal protest was made. *Monongahela Navigation Co.* v. *Wood*, 45 Atl. Rep. 73 (Pa.).

The general doctrine is that money paid to induce the performance of a duty which one has a legal right to demand can be recovered back. *Steele* v. *Williams*, 8 Ex. 625; *Parker* v. *Great Western Ry.*, 7 M. & G. 253. The absence of protest is not decisive against the plaintiff, since the defendant may nevertheless have obtained the money by what the law regards as compulsion, and it may therefore be unconscionable for him to keep it. *Lamborn* v. *County Comrs.*, 97 U. S. 181. In the principal case, however, the question of reasonableness being purely one of opinion, it is most probable that the money was paid as a compromise of the dispute. The absence of protest tends to strengthen this view according to which the case falls within the general rule, and there can be no recovery of the money paid, since it is not unconscionable for the defendant to abide by the results of such a compromise. *Richmond* v. *Union, etc., Co.*, 87 N. Y. 240.

SALES — INTOXICATING LIQUORS — SOCIAL CLUBS. — The defendant, an incorporated social club of limited membership, furnished liquor only to members of the club, for checks bought of the steward. *Held*, that the defendant is subject to the tax imposed for "selling" liquors. *United States* v. *Alexis Club*, 98 Fed. Rep. 725 (Dist. Ct. Pa.).

The weight of authority supports this decision. *State* v. *Soule*, 74 Mich. 250; *State* v. *Neis*, 108 N. C. 787; *Marmont* v. *State*, 48 Ind. 21. An opposite line of cases regards the transaction as "no more than an equitable mode by which the cost of the liquor used by members of the club is divided among them in proportion to the quantity which each member uses." *Piedmont Club* v. *Commonwealth*, 87 Va. 540; *Graff* v. *Evans*, 8 Q. B. D. 373; *Klien* v. *Livingston Club*, 177 Pa. St. 224. As there is here a transfer of the legal title to the liquor from the club to the individual for a money consideration, it is difficult to see what element of a sale is lacking. *Jenkins* v. *Brown*, 14 Q. B. 496. It may be doubtful whether these sales are within the spirit of the legislative prohibition, but this consideration seems hardly sufficient to prevent the application of the plain words of the statute. The principal case is believed to take the sounder view. See 10 HARV. LAW REVIEW, 125.

SALES — PASSING OF TITLE — PRESUMPTION OF INTENTION. — The plaintiff agreed to sell, and the defendant agreed to buy, a stack of hay. The stack was to be weighed, and the vendee charged accordingly. The hay was accidentally destroyed before it was weighed. *Held*, that the title had passed to the vendee, and therefore he must bear the loss. *Young* v. *Minker*, 59 Pac. Rep. 622 (Col., C. A.).

In order to effect a sale it is necessary that the vendor and vendee shall contemporaneously agree that the title shall pass. Benj., Sales, 7th ed. ch. III. It is universally held that if the price of the goods is to be determined by a subsequent ascertainment of their weight, there is a *prima facie* presumption that the parties do not intend the title to pass before the goods are weighed. *Simmons* v. *Swift*, 5 B. & C. 857; *Klein* v. *Tupper*, 52 N. Y. 550; *The Elgee Cotton Cases*, 22 Wall. 180. This presumption seems based upon an inference which is weak and conjectural. For, since both parties will usually take part in the act of weighing, there is little reason to suppose that the title to the property was intended to be in one of the parties rather than the other at the time when this act is performed. Black, Sales, 2d ed. 175, 242. A better view appears to be that the intention is to be ascertained, like any matter of fact, from a consideration of all the evidence in the case without the aid of any rule of presumption. This is the view of the principal case, which, though opposed to the settled law in other jurisdictions, is strongly to be commended.

SURETYSHIP — STATUTE OF FRAUDS. — The plaintiffs were employed by a contractor to work upon a house which the contractor was building for the defendant. The plaintiffs hesitated to go on with the work, when the defendant promised them he would see that they were paid if they would continue. *Held*, that the promise of the defendant is not within the statute of frauds. *Almond* v. *Hart*, 61 N. Y. Supp. 849 (Sup. Ct., App. Div., Fourth Dept.).

The promise is clearly within the terms of the statute. The court applies to the case, however, the general doctrine that it was not intended to include within the operation of the statute promises of guaranty the consideration for which moves directly from the promisee to the guarantor. As an original question this notion would appear to be quite erroneous, but it is probably finally established by the authorities. *Raabe* v. *Squier*, 148 N. Y. 81; *Davis* v. *Patrick*, 141 U. S. 479. It had its origin no doubt in a feeling that the guarantor, having received a particular benefit as a result of his promise, ought to be subjected to some liability therefor. But the proper remedy, it would seem, would have been an action in *quasi contract*. A suggestion to this effect is found in the early case of *Williams* v. *Leper*, 3 Burr. 1886. The objection does not go merely to the form of the action. The measure of damages in *quasi contract* would be obviously different from what it is in an action on the guaranty, so that the substantive rights of the parties are affected. The application of the accepted rule to the facts of the principal case is, however, sound.

REVIEWS.

AMERICAN BANKRUPTCY REPORTS ANNOTATED. Reporting the Bankruptcy Decisions and Opinions in the United States of the Federal Courts, State Courts, and Referees in Bankruptcy. Vol. II. Edited by Wm. Miller Collier. Albany, N. Y.: Matthew Bender. 1900. pp. xxiv, 881.

REPORT OF THE TWENTY-SECOND ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION, held at Buffalo, New York, August 28, 29, and 30. 1899. Philadelphia: Dando Printing and Publishing Company. 1899. p. 744.

A TREATISE ON THE LAW OF WILLS. By H. C. Underhill. In two volumes. Chicago: T. H. Flood and Company. 1900. pp. cxlii, 698, xvi, 699–1501. *Review will follow.*

THE NEW HAMPSHIRE REPORTS. Vol. LXVIII. John H. Riedell, Reporter. Manchester: The John B. Clarke Company. 1900. pp. xxix, 652.